



**Ninety-Eighth Legislature - Second Session - 2004**  
**Committee Statement**  
**LB 1207**

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**Hearing Date:** February 25, 2004

**Committee On:** Judiciary

**Introducer(s):** (Brashear)

**Title:** Change civil procedure provisions

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

8 Yes                      Senators Brashear, Chambers, Foley, Mines, Mossey, Pedersen,  
                                    Quandahl, Tyson

No

Present, not voting

Absent

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**Proponents:**

Senator Kermit Brashear

Roger Kirst

**Representing:**

Introducer

Nebraska Supreme Court Commission on  
Practice and Procedure

**Opponents:**

John Grant

**Representing:**

Nebraska State Bar Association

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

Legislative Bill 1207 changes provisions relating to civil procedure.

First, LB 1207 provides a uniform rule for post-trial motions. Current statutory language states that a motion for new trial shall be filed no later than ten days after the entry of judgment. This language is identical to the language of the Federal Rules of Civil Procedure, which is interpreted to permit the motion to be filed after the announcement of a judgment but before entry of that judgment. However, the Nebraska Supreme Court has interpreted the language in Nebraska's statute as if only allowing a motion for new trial to be brought within ten days after the court has entered the judgment. Similar language exists in statutes relating to a motion for

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judgment notwithstanding the verdict and a motion to alter or amend a judgment. LB 1207 aligns Nebraska's practice with federal practice by clarifying that a motion for a new trial, motion for judgment notwithstanding the verdict, or motion to alter or amend a judgment filed after the announcement of a verdict but before entry of the judgment shall be treated as filed after the entry of judgment.

Next, LB 1207 cleans up language relating to forcible entry and detainer actions. Neb. Rev. Stat. §25-21,219 was amended in 1984 to allow forcible entry and detainer actions to be filed in either District Court or County Court. However, the 1984 amendment made no change in the references to the County Court in four other sections, resulting in such anomalies as providing that an appeal from the District Court will be heard by the District Court. LB 1207 corrects these inconsistencies.

Finally, LB 1207 amends the statutory sections concerning divorce and dissolution actions to reflect terms used for all other civil actions. Changes made by LB 1207 state that the first pleading in a divorce action is a Complaint and that the parties to the action are defined as Plaintiff and Defendant. Divorce and dissolution pleadings are subject to the general rules for pleadings in civil actions under LB 1207. A complaint to modify would be the appropriate pleading to commence modification proceedings relating to custody, child support, or alimony under LB 1207.

#### **Explanation of amendments, if any:**

The Committee Amendment incorporates the following bills into LB 1207:

#### **LB 788 – Introduced by Senator Quandahl**

Under current law, an examination of a judgment debtor can only occur after an execution of the debtor's personal property has been returned unsatisfied. Once the execution has been returned, a judgment creditor is entitled to an order from the court requiring the debtor to appear and answer questions regarding his or her property.

LB 788 provides that at any time after the entry of a judgment against a debtor, the creditor is entitled to an order from the court compelling the debtor to appear before the court to answer questions concerning his or her property.

#### **LB 882 – Introduced by Senator Quandahl**

Under current statute, a summons issued in a forcible entry and detainer action may be served and returned as in other cases or by any person. LB 882 makes a technical change to the current language, stating that a summons may be served and returned as provided in the statutory sections governing service of process in civil actions.

As amended by the Judiciary Committee, LB 882 further states that, if service cannot be made with reasonable diligence under the above listed sections, a copy of the summons may be left at the detained premises or mailed by first class mail to the defendant's last known address.

#### **LB 887 – Introduced by Senator Quandahl**

Under current statute, supersedeas bonds are issued in the following manner:

- 1) When the judgment, decree or final order directs the payment of money, the bond shall be the amount of the judgment, decree or final order and all taxable court costs, the estimated interest that will accrue on the judgment, decree or final order between its date and final determination, and estimated costs of appeal.
- 2) When the judgment, decree or final order directs the execution of a conveyance or other instrument, the sale or delivery of possession of real estate or dissolves or modifies an injunction, the bond is an amount prescribed by the court.

As amended by the Judiciary Committee, LB 887 sets a maximum bond at fifty percent of the appellant's net worth. In addition, the bill, as amended, provides the court with the authority to enter any orders necessary to protect the appellee and require the appellant to post a bond up to the full amount of the judgment in cases where the appellant is dissipating or diverting assets outside of the ordinary course of business.

#### **LB 1035 – Introduced by Senator Brashear**

Under current statutory law, an objection to an application to proceed in forma pauperis must be made within thirty days after the filing of the application. LB 1035 provides an exception to the thirty day time limit, allowing an objection to proceeding in forma pauperis to be made at any time if the ground for the objection is that the initial application was fraudulent.

#### **LB 1157 – Introduced by Senator Landis**

Nebraska statutes currently do not specifically exempt federal or state earned income tax credit (EITC) refunds from bankruptcy proceedings. LB 1157 would exempt the full amount of any federal or state EITC refund from garnishment, attachment and all creditor claims.

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**Senator Kermit A. Brashear, Chairperson**